THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ED HARTMAN, a sole proprietorship doing business as OLYMPIC MARIMBA RECORDS, ED HARTMAN PERCUSSION STUDIO and THE DRUM EXCHANGE; JANET HODGIN and MICHAEL HODGIN, a partnership doing business as KIDS NORTHWEST; and MICHAEL A. SPAFFORD, a sole proprietorship doing business as "SPIKE" MAFFORD PHOTOGRAPHY, individually and on behalf of a class of Washington residents similarly situated, Plaintiffs, v. COMCAST BUSINESS COMMUNICATIONS, LLC, a Pennsylvania corporation, COMCAST CORPORATION, a Pennsylvania corporation and its subsidiaries and affiliates; MARKETOUCH MEDIA, INC., a Texas corporation, Defendants.	CIVIL ACTION NO. C10-0413RSL **FINAL ORDER AND JUDGMENT**

On December 1, 2011, a hearing was held on the motion of plaintiffs for final approval of the Release and Settlement Agreement dated July 21, 2011 reached in the above-referenced matter (the "Settlement Agreement") (Attached to Declaration of Rob Williamson and Kim Williams, Dkt. #76) and seeking entry of a final judgment concluding this Action. The Court, having considered the arguments of the parties, the papers submitted in support thereof, and all other matters properly before the Court, hereby **ORDERS** as follows:

1. Except as specifically noted below, the Court for purposes of this Final Order and Judgment adopts the definitions set forth in the Settlement Agreement, unless otherwise defined below.

2. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Class Representatives fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

> All Washington businesses, including businesses operated out of residences, who received one or more commercial solicitations from Comcast directly or through its agents through the use of an automatic dialing and announcing device during the period of February 19, 2006, through the entry of the Preliminary Approval Order.

A list of those Persons who have timely and properly requested exclusion from the Class is appended to this Final Approval Order as Attachment 1.

3. This Court has jurisdiction over the subject matter of this Action and over all parties to the Settlement Agreement, including all Class Members.

4. The Class Notice delivered pursuant to the Court's preliminary order of approval, dated August 4, 2011 (the "Amended Preliminary Approval Order") (Dkt. #84) constituted the best notice practicable under the circumstances to all potential members of the Class and fully complied with Fed. R. Civ. Proc. 23(e)(1). The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement Agreement and allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and any other applicable law. A full opportunity has been offered to the Class Members to object to the proposed Settlement and to participate in the hearing thereon. Thus, it is hereby determined that all Class Members who did not timely elect to exclude themselves by written communication are bound by this Order and Final Judgment.

5. The settlement set forth in the Settlement Agreement is hereby finally approved as fair, reasonable and adequate to all parties and Class Members pursuant to Fed. R. Civ. Proc. 23(e)(2).

6. All Class Members: (1) are bound by this Final Judgment; (2) are forever barred from instituting, maintaining, or prosecuting any of the Released Claims; and (3) have released and discharged defendants from any and all liability with respect to such Released Claims, including but not limited to claims for attorneys' fees, costs, and expenses. The Released Claims are set forth in Paragraph 13.1 of the Settlement Agreement, which states:

> Upon final approval of the terms of this Settlement Agreement by the Court, the Class Members, on behalf of themselves, their descendants, ancestors, dependents, heirs, executors, and administrators, and on behalf of each of their past and present predecessors, successors, assigns, subsidiaries, affiliates, parents, operating entities, employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, jointly and severally, fully and forever release Comcast and Marketouch, and each of their past and present predecessors, successors, assigns, subsidiaries, affiliates,

and operating entities, and each of their respective past and present employees, officers, directors, attorneys, agents, shareholders, partners, joint venturers, insurers and sureties, of and from any claim, duty, obligation, lien, demand, damage, cause of action, or liability of any nature whatsoever, whether or not now known, suspected, pled, or claimed, whether raised by claim, counterclaim, setoff or otherwise, that any of them ever had, now has, or may claim to have had, that relates to, or otherwise arises from the Action or any allegations or claims raised therein (the "Released Claims"). Released Claims do not include (1) claims arising from the delivery of pre-recorded messages that were not delivered by or on behalf of Comcast; or (2) claims that do not arise as a result of Comcast directly or indirectly using an automatic dialing and announcing device for business to business solicitation calls.

7. Neither the Settlement Agreement, nor any of its terms or provisions, nor any document executed pursuant to it, nor any other act taken to negotiate it or carry it out, shall be construed as or raise any presumption or inference of any concession or admission, or any waiver of any right, claim or defense of any party or any Class Member, except insofar as such rights, claims or defenses are expressly released or discharged by this Final Judgment.

8. Neither this Final Order and Judgment, the Settlement Agreement, nor any of the negotiations, documents or proceedings connected with them shall be:

(a) offered or received against the defendants Comcast and Marketouch (the "Defendant(s)")as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the defendants with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any Defendant;

(b) offered or received against any defendant as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statements or written document approved or made by any Defendant;

(c) offered or received against Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to or for any other reason as against the Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, Released Parties (as defined in the Settlement Agreement) may refer to it to effectuate the liability protection granted them hereunder including to support a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) construed against Defendants or the Class Members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

9. (e) construed as, or received in evidence as, an admission, concession or presumption against the Plaintiffs or the Class Members that any of their claims are without merit or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount. The Court reserves jurisdiction over the Parties, including all Class Members, for purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement.

10. The Court approves and directs that all Class Members who have submitted valid claims (a total of 1521 Class Members) be paid $100 per call received. This amount totals $159,500.00.

11. The Court further directs Comcast to pay two hundred eighty-five thousand dollars and no cents ($285,000.00) to the Legal Foundation of Washington and two hundred eighty-five thousand dollars and no cents ($285,000.00)), in equal shares, to El Centro de la Raza and Neighborhood House.

12. The Court orders Comcast to pay up to two hundred-and-fifty thousand dollars

and no cents ($250,000.00) to the Claims Administrator for claims administration costs. The Court orders Comcast to pay any claims administration costs in excess thereof, if any, to the Claims Administrator, and if claims administration costs are less, the excess funds will be retained by Comcast.

13. The Court hereby approves an award of Class Counsel attorneys' fees and costs of Eight Hundred Seventy Thousand Dollars ($870,000.00) to be paid by Comcast in the manner provided in the Settlement Agreement.

14. None of the payments specified in Paragraphs 10-13, *supra* are the liability of Comcast except as provided in the Settlement Agreement.

15. The Court further hereby approves an incentive payment of $10,000 to each Lead Plaintiff to be paid as provided in the Settlement Agreement. This payment is not a liability of Comcast except as provided in the Settlement Agreement.

16. Plaintiffs' claims against Comcast and Marketouch are hereby dismissed with prejudice and with all parties to bear their own costs and fees.

IT IS SO ORDERED.

Dated: December 1, 2011.

Hon. Robert S. Lasnik
United States District Court Judge